(1)

IN THE HIGH COURT OF JUDICATURE
AT BILASPUR
W.P.NO.1186 OF 2001

SMT. SARLA BEN KOTAK, w/o Shri B.M. Kotak aged about 65 years Prop. M/s Kotak Traders, Kotak Bhawan Station Road, Raipur.

Through : Attorney Shri Harish Kotak, son of Shri B.M. Kotak, aged about 50 years, resident of Fafadih Raipur.

PETITIONER

VERSUS

1) RAIPUR MUNICIPAL CORPORATION
A body Corporate constituted under the relevant provisions of M.P.Municipal Corporation Act.1956 having its office at Malviya Road, Raipur through the Commissioner of Raipur.

2) THE COMMISSIONER, Raipur Municipal Corporation Raipur.

3) M/s KUKREJA BUILDERS A Partnership firm, duly registered under the relevant provisions of Indian Partnership Act 1932, K.T. Complex, Bajari Road, Raipur Chhattisgarh.

RESPONDENTS

(2)

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WRIT PETITION UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIAFOR ISSUANCE OF WRITS IN THE NATURE OF MANDAMUS. CERTIORARI PROHIBITIONS ETC. AND/OR FOR ORDER OR ORDERS, DIRECTION OR/AND DIRECTIONS IN THE NATURE OF WRITS.

A.F.R.

HIGH COURT OF CHHATTISGARH : BILASPUR

WRIT PETITION NO. 1186 of 2001

Smt. Sarla Ben Kotak

-v-

Raipur Municipal Corporation and Others.

WRIT PETITION NO. 1187 of 2001

Balbir Singh Chhaddha

-v-

Raipur Municipal Corporation and Others.

WRIT PETITION NO. 1188 of 2001

Gurbaksh Singh Chaddha

-v-

Raipur Municipal Corporation and Others.

CORAM : Hon'ble Shri W.A. Shishal, C.J.
Hon'ble Shri Fakhruddin, J.

Petitioner by Shri B.P. Sharma, Advocate.

Respondents No. 1 and 2 by Shri Manindra Shrivastava, Adv.

Respondent No. 3 by Shri Prashant Mishra, Advocate.

O R D E R

This order shall dispose of W.P. No. 1186/2001, W.P. No. 1187/2001 and W.P. No. 1188/2001.

2) These three petitions were filed on 20th July,2001 for restraining the Municipal Corporation to demolish the shops said to be constructed in contravention of law. In fact, the petitioner has stated in para 4 of the petition itself that in the morning of 19th of July,2001 the respondents No. 1 and 2 have started demolishing a triple storied building raised by the respondent No. 3 in the year 1999, in a part of which the petitioner is carrying on his business after the purchase of a small shop in the said building.

3) During the course of arguments, learned counsel appearing for the petitioner submitted that the building, though constructed illegally, has been demolished and he is entitled for compensation from the Corporation as well as respondent No. 3.

4) The respondents/Corporation have filed joint return in all the three petitions. The stand of the Corporation is that the construction made by respondent no. 3 on this area was in contravention of law. It is stated that on the basement, shops were contructed which was reserved for parking and set-ups were not as per the map. It was also submitted that 2nd and 3rd floor were also not as per the map. It is said that notices were issued to respondent no. 3/builder from time to time. It is stated in return by the Corporation that the construction was not made in accordance with the map and building permission. Mere deposit of tax does not mean that illegal construction has been condoned. The Revenue Department of the Corporation collects tax on the basis of calculations of constructed area, and at that time no enquiry is made whether the construction is legal or illegal. It is submitted by the counsel for the respondents that the petitioner is free to sue the builder for damages. It is further stated that upon serving of notice on the builders, the petitioner and other occupants of the shop came to know that illegal construction is required to be removed and they requested the authority of the answering/Corporation respondent to give sufficient time to remove their goods and belongings. The answering respondents permitted them to do so and illegal construction was removed only after they vacated the premises. The petitioner ought to have made/due enquiry

from the notice of the answering respondent and then should have proceeded to purchase the shop. Had the petitioner made due and proper enquiry, he could have come to know that notices have been issued in the past to the builder about illegal and unauthorised construction made.

5. Learned counsel for the respondent no. 3 submits that information of notice was given to the petitioner. On the other hand, learned counsel for the petitioner submits that no information was given to him. He further submits that the petition as filed is not maintainable. He also submits that due information was given to the petitioner regarding demolition and the petitioner also approached the Corporation authorities but in vain. He further submits that the petition involves disputed questions of fact which cannot be gone into writ jurisdiction. He submitted that he is not liable for compensation.

6. Having heard the learned counsel for the parties, perused the record and given our thoughtful consideration to the rival contentions raised by the parties, it is menifestly clear that this petition at the behest of the petitioner involves disputed questions of fact. Even otherwise, the area in occupation of the petitioner has practically been demolished.

7. Learned counsel for the Corporation contended that the Corporation is entitled to cost of demolition. Learned counsel for the petitioner on the other hand submitted that he is entitled for compensation from Corporation as well as builder.

9. The case thus involves determination of rights and liabilities inter-se. The rule of prudence

and caution requires that such dispute if any may be raised by the parties in duly constituted suit ~~by rival parties~~.

10. In the facts and circumstances of the case, we do not find the present one to be fit case for exercising extraordinary jurisdiction under Article 226 of the Constitution.

11. In that view of the matter, the petition is ~~xxx~~ disposed of.

12. Counsel fee as per rule if certified.

13. A copy of this order be placed in the record of W.P. No. 1187/2001 and W.P. No. 1188/2001.

Sd/-
Chief Justice
25-8-2001

Sd/-
Fakhruddin
Judge
25-8-2001

pathak/-